IN THE ENVIRONMENT COURT
AT WELLINGTON

I TE KŌTI TAIAO O AOTEAROA
KI TE WHANGANUI-A-TARA

IN THE MATTER	of appeals under cl 14 of Schedule 1 to the Resource Management Act 1991
BETWEEN	WAIRARAPA WATER USERS INC SOCIETY (ENV-2019-WLG-000105) WELLINGTON FISH AND GAME COUNCIL (ENV-2019-WLG-000122) RANGITĀNE TŪ MAI RĀ TRUST and RANGITĀNE O WAIRARAPA INC SOCIETY (ENV-2019-WLG-000125) Appellants
AND	WELLINGTON REGIONAL COUNCIL Respondent

Court:	Environment Judge B P Dwyer sitting alone under s 279 of the Act
Date of Order:	8 December 2021
Date of Issue:	8 December 2021

CONSENT ORDER

A: Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that the changes set out in **Appendix A** be made to the Proposed Plan.

B: The appeal by Wairarapa Water Users Inc Society is otherwise dismissed. The parts of the other appeals concerning Topic 23: water allocation – supplementary allocation are otherwise dismissed.

C: Under s 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] The Court has read the notices of appeal and the memorandum of the parties received 21 July 2021.

Other relevant matters

[2] The following persons gave notice of an intention to become parties to the appeals under s 274 of the Act, and have signed the consent memorandum setting out the relief sought:

- Federated Farmers of New Zealand Inc;
- Royal Forest and Bird Protection Society of New Zealand Inc;
- Wellington Water Ltd;
- Masterton District Council; and
- South Wairarapa District Council.

[3] Horticulture New Zealand did not sign the consent memorandum, but in accordance with the Court's direction in its minute dated 28 April 2021, it is deemed to have accepted the consent memorandum and order.

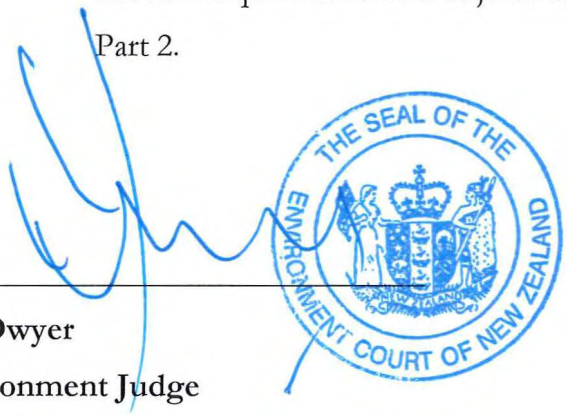
[4] CentrePort Ltd and CentrePort Properties Ltd and Fire and Emergency New Zealand were supplied with the consent order in accordance with the Court's 4 June

2021 direction. Both confirmed they have no interest in the matter. In addition, the Regional Council provided s 274 parties Kahungunu ki Wairarapa and Carterton District Council with the consent memorandum. They did not respond, and it is assumed they have no interest in the matter.

[5] The Court is making this order under s 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297. The Court understands for present purposes that:

(a) all parties to the proceedings have executed the memorandum requesting this order or are deemed to have done so in accordance with the Court's minute of 28 April 2021;

(b) all parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.



B P Dwyer
Environment Judge

KEY:

Red track - changes agreed in post mediation discussions by the parties

Green track - changes in the Decisions Version of the PNRP, with clause 16 changes

APPENDIX A - RELEVANT PROVISIONS - (DECISIONS VERSION - WITH CLAUSE 16 CHANGES) - TOPIC 23 SUPPLEMENTARY ALLOCATION

CHAPTER 2 INTERPRETATION

Water harvesting	Taking water from waterbodies when the amount of water is plentiful, and storing it outside the waterbody.

CHAPTER 3 OBJECTIVES

Objective O52

The ~~efficiency of~~ **efficient** **allocation** and efficient use of water is improved and **maximised** through time~~.~~, including through **water harvesting.** ~~by means of:~~

~~(a) efficient infrastructure, and~~

~~(b) **good management practice**, including irrigation, domestic municipal and industry practices, and~~

~~(c) maximising reuse, recovery and recycling of water and contaminants, and~~

~~(d) enabling water to be transferred between users, and~~

~~(e) enabling water storage outside river beds.~~

CHAPTER 4 POLICIES

Policy P11: Water Storage

Promote the development of **water harvesting** and recognise its benefits as a means to achieve improved efficiency in the allocation and use of water.

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~~Policy P11: In-stream water storage~~

~~The benefits associated with the damming and storing of water within the bed of a river are recognised when:~~

~~(a) there are significant social and economic benefits for the region, and~~

~~(b) water remains available for multiple in-stream and out of stream uses concurrently, and~~

~~(c) the reliability of water supply improves as a result, and~~

~~(d) the damming and storage of water contributes to the **efficient allocation** and use of water.~~

Schedule V: Implementation of supplementary allocation policy

When rivers are flowing at a rate above median flow, supplementary allocation may be taken in addition to core allocation (~~in accordance with P117 and~~ relevant rules are WH.R1, K.R1 and R.R1).

The following approach will be used for each consent application to determine when supplementary allocation can be taken and the supplementary allocation amount (in L/sec):

- Three bands of supplementary allocation are defined for flows above median;
    - Band 1 = allocation amount available between flows of median and 1.5 x median
    - Band 2 = allocation amount available between flows of 1.5 and 2 x median
    - Band 3 = allocation amount available at flows between 2 and 3 x median, plus flows that exceed 3x median, after providing for the average annual frequency of flushing flows[1].
- The flow at which a supplementary take can begin (on a rising flow) or must cease (on a receding flow) is the Band 1 flow measured at the management point (telemetered flow monitoring site) for that catchment [and is listed in Tables 1 and 2; see also **Notes 1** and **3**].

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1 ~~Subject to~~ There is discretion to allow further allocation above Band 3 flows if the frequency of flushing flows ~~(exceeding 3 x median)~~ is not changed, as required by Clause (~~c~~d) (i) of Rules R.R1, and (c) (i) of Rules WH.R1 and K.R1. The frequency of flushing flows means the average annual frequency of flows that exceed 3x median flow.

- Band 2 and 3 flows are the thresholds measured at the management point (telemetered flow monitoring site) for that catchment at which increased allocation amounts become available [listed in Tables 1 and 2 and see **Notes 1** and **3**].

- The maximum amount of available allocation in each band will be calculated for each point of take as:

For takes from rivers (and their tributaries) in Table 1 [mean flow > 1m³/sec]	For takes from rivers (and their tributaries) in Table 2 [mean flow < 1m³/sec]	For takes from rivers (and their tributaries) not listed in Table 1 or Table 2
50% of the portion of natural flow at point of take ~~(above median)~~ within each band minus all existing upstream supplementary allocation *[see Method 1 for detailed calculation steps and **Note 2**]*	*10% of total natural flow at point of take minus all existing upstream supplementary allocation* *[see Method 2 for detailed calculation steps and **Note 2**]*	*10% of total natural flow (at point of take) minus all existing upstream supplementary allocation* *[see Method 2 for detailed calculation steps and **Notes 2 and 3**]*

~~This calculation may be made for one or more flow bands above median flow (depending on individual circumstances) to arrive at one or more allocation blocks specific to the take. Each block will have a flow threshold referenced to the management point.~~

- ~~The take must not cause supplementary allocation at any downstream location to exceed the amounts relevant to that downstream location~~

- ~~—~~

Calculation of ~~the amount of flow available above median flow at point of take~~ allocation amounts at point of take following Methods 1 and 2 may require site specific flow measurements to be supplied by the consent applicant in order to derive a robust site median. This will normally take the form of a flow correlation between the point of take and the relevant management point.

Note 1

The time interval over which compliance should be checked needs to reflect risk to the river but also take into account practical considerations (eg, over what time intervals should water users be reasonably expected to check and respond?). During a flow recession, especially in summer, river flows in some rivers and streams can transition from well above to well below median within hours rather than days. Therefore it may be necessary for compliance with the supplementary flow threshold in these rivers to be based on relatively instantaneous data (e.g. water users should check every few hours and respond accordingly). On larger rivers (such as the Ruamāhanga) the recessions below median to low flows occur much more slowly (over many days) and the time interval for compliance check-and-respond can be greater. Flow for management points should be published and updated on the GWRC

website at time intervals appropriate to the catchment, along with an alert when flow has risen above or fallen below median

Note 2

The take must not cause total supplementary allocation at any downstream location to exceed the amounts relevant to that downstream location.

In general, median flow is a sufficiently high enough statistic that core allocation (which can also be taken at flow above median) does not need to be accounted for when deriving supplementary allocation flows and amounts. However, in some catchments existing core allocation comprises a relatively substantial portion of main stem median flow (i.e. >20%). In these catchments, discretion should be exercised as to whether core allocation should also be accounted for in the calculation of supplementary flow and the allocation amount.

Note 3

For takes from rivers (and their tributaries) in Tables 1 and 2 or elsewhere for which no GWRC management point or median flow value is available, or for which a more suitable site/flow value can be used, calculating the supplementary allocation cease takes and allocation amounts will be the same as described above, except that:

- ~~*The median flow (L/sec) cease take*~~ ~~*Cease takes*~~ *Trigger flows for each band (in L/sec) will need to be either derived from the nearest appropriate telemetered flow monitoring site (based on correlation of data between the point of take and the telemetered flow site) or measured at the point of take by the consent holder with an appropriately configured flow monitoring site.*

- *The band allocation amounts will need to be calculated from a derived flow record based on correlation of data between the point of take and the nearest appropriate flow monitoring site. Council will periodically review flow statistics and, where appropriate, undertake flow investigations to improve the accuracy of statistics in ungauged catchments. This may include installing additional flow recorder sites.*

Note 4

Where a consent holder has the ability to operate a graduated abstraction system (i.e. to progressively increase or decrease abstraction rate in small increments to match river flow changes, usually under automated control) then the band allocation approach may not need not to be applied in full. In such cases, a tailored trigger flow above median to begin/cease take could be calculated (taking account of any pre-existing takes in the catchment) but additional trigger flows above that may not be required. It would still be necessary to identify a maximum rate that could be abstracted by the consent holder between median and three-times median flow to allow this amount to

be accounted for within the band system being applied to other consents in the same catchment.

Table 1. Rivers (and their tributaries) with mean flow of greater than 1 m^3/sec

Whaitua	River (and tributaries) [excluding tributaries listed in separate rows of this table or Table 2]	Management point [Telemetred GWRC flow monitoring site]	Median flow (L/sec)[1]	Band 1 flow range (L/sec)	Band 1 maximum allocation (L/sec)	Band 2 flow range (L/sec)	Band 2 maximum allocation (L/sec)	Band 3 flow range (L/sec)	Band 3 maximum allocation (L/sec)
Kāpiti Coast	Waikanae River upstream of the coastal marine area boundary	Wastewater Treatment Plant (WTP) recorder	2,855	3,570 - 4995	Calculated for each point of take using Method 1	4,996 - 7140	Calculated for each point of take using Method 1	>7,141	Calculated for each point of take using Method1
	Ōtaki River upstream of the coastal marine area boundary	Pukehinau recorder	16,080	20,100 – 28,140		28,141 – 40,200		>40,201	
Hutt/Wellington	Akatarawa River	Cemetery recorder	3,110	3,890 – 5,445		5,446 – 7,775		>7,776	
	Mangaroa River	Te Marua recorder	1,780	2,225 – 3,115		3,116 – 4,450		>4,451	
	Te Awa Kairangi/Hutt River downstream of the confluence with the Pakuratahi River	Birchville recorder	11,495	14,370 – 20,115		20,116 – 28,740		>28,741	
	Wainuiomata River upstream of the coastal marine boundary	*[see Note 3]*	*[see Note 3]*						
	Orongorongo River upstream of the coastal marine boundary	*[see Note 3]*	*[see Note 3]*						
Ruamāhanga	Kopuaranga River upstream of the confluence with the Ruamāhanga River	Palmers recorder	1,200	1,500 – 2,100		2,101 – 3,000		>3,001	
	Tauweru River upstream of the confluence with the Ruamāhanga River	Te Whiti Bridge recorder	1,330*	1,665 – 2,330		2,331 – 3,325		>3,326	

	Whangaehu River upstream of the confluence with the Ruamāhanga River	Waihi Recorder	155	195 - 270		271 - 390		>391	
	Waipoua River upstream of the confluence with the Ruamāhanga River	Mikimiki Bridge recorder	1,825*	2,280 – 3,195		3,196 – 4,565		>4,566	
	Tauherenikau River upstream of the confluence with Lake Wairarapa	Renalls Weir recorder	4,660	5,825 – 8,155		8,156 – 11,650		>11,651	
	Waingawa River upstream of the confluence with the Ruamāhanga River	Kaituna recorder	4,880	6,100 – 8,540		8,541 – 12,200		>12,201	
	Mangatarere Stream upstream of the confluence with the Waiohine River	Gorge recorder	880	1,100 – 1,540		1,541 – 2,200		>2,201	
	Waiohine River upstream of the confluence with the Ruamāhanga River	Gorge recorder	12,295	15,370 – 21,515		21,516 – 30,740		>30,741	
	Huangarua River upstream of the confluence with the Ruamāhanga River	Hautotora recorder	850*	1,065 – 1,490		1,491 – 2,125		>2,126	
	Tauanui River upstream of confluence with the Ruamāhanga River	*[see Note 3]*	*[see Note 3]*						
	Turanganui River upstream of confluence with the Ruamāhanga River/Lake Onoke	*[see Note 3]*	*[see Note 3]*						
	Upper and Middle Ruamāhanga River upstream of the confluence with the Waiohine River	Wardells recorder	12,270	15,340 – 21,475		21,476 – 30,675		>30,676	

	Lower Ruamāhanga River between the boundary with the coastal marine area and the confluence with the Waiohine River	Waihenga recorder	46,035	57,545 – 80,560		80,561 – 115,090		>115,091	
Wairarapa Coast	Pahaoa River upstream of the coastal marine area	Hinakura recorder	2,180	2,725 – 3,815		3,816 – 5,450		>5,451	
	Kaiwhata River upstream of the coastal marine area	*[see Note 3]*	*[see Note 3]*						
	Whareama River upstream of the coastal marine area	*[see Note 3]*	*[see Note 3]*						
	Awhea River upstream of the coastal marine area	*[see Note 3]*	*[see Note 3]*						
	Opouawe River upstream of the coastal marine area	*[see Note 3]*	*[see Note 3]*						
	Mataikona River upstream of the coastal marine area	*[see Note 3]*	*[see Note 3]*						

[1] Median is calculated from 20 year period of data from 01 July 1997 to 30 June 2017 for all sites except those with an asterisk (*) where the period of record is between 10-15 years. Median flow is generally a very stable statistic over time but these values should be reviewed and updated on a 10 year cycle to account for possible future climate/flow trends.

Table 2. Rivers (and their tributaries) with mean flow of less than 1 m^3/sec

Whaitua	River (and tributaries)	Management point [Telemetred GWRC flow monitoring site]	Median flow (L/sec)[1]	Band 1 flow range (L/sec)	Band 1 maximum allocation (L/sec)	Band 2 flow range (L/sec)	Band 2 maximum allocation (L/sec)	Band 3 flow range (L/sec)	Band 3 maximum allocation (L/sec)
Kāpiti Coast	Mangaone Stream upstream of the coastal marine area boundary	Ratanui recorder	200	~~250~~ 220 - 351	Calculated for each point of	351 - 500	Calculated for each point of	>501	Calculated for each point of take
	Waitohu Stream upstream of the coastal marine area boundary	Water Supply Intake (WSI) recorder	450	~~565~~ 510 - 790		791 – 1,125		>1,126	

Porirua	Pauatahanui Stream upstream of the coastal marine area boundary	Gorge recorder	335	~~420~~ 380 - 585	take using Method 2	586 - 840	take using Method 2	>841	using Method 2
	Horokiri Stream upstream of the coastal marine area	Snodgrass Recorder	300	~~375~~ 340 - 525		526 - 750		>751	
Ruamāhanga	Papawai Stream upstream of the confluence with the Ruamāhanga River	Fabians Road recorder	310	~~390~~ 350 - 545		546 - 775		>776	
	Otukura Stream upstream of the confluence with Lake Wairarapa	Weir recorder	355	~~445~~ 405- 620		621 - 890		>891	
	Parkvale Stream upstream of the confluence with the Ruamāhanga River	Renalls Weir recorder	550*	~~250~~ 225 - 350		351 - 500		>501	
	Muhunoa Stream upstream of the confluence with the Waiohine River	*[see Note 3]*	*[see Note 3]*						
	Beef Creek upstream of the confluence with the Mangatarere Stream	*[see Note 3]*	*[see Note 3]*						
	Kaipatangata Stream upstream of the confluence with the Mangatarere Stream	*[see Note 3]*	*[see Note 3]*						
	Poterau Stream upstream of the confluence with the Whangaehu River	*[see Note 3]*	*[see Note 3]*						
	Makoura Stream upstream of the confluence with the Ruamāhanga River	*[see Note 3]*	*[see Note 3]*						

[1] Median is calculated from 20 year period of data from 01 July 1997 to 30 June 2017 for all sites except those with an asterisk (*) where the period of record is between 10-15 years. Median flow is generally a very stable statistic over time but these values should be reviewed and updated on a 10 year cycle to account for possible future climate/flow trends.

Method 1 for calculating point of take allocation amounts for rivers with mean flow > 1 m^3/sec

The following methods should be followed to calculate allocation amounts for each band for each point of take.

Data required to make the calculations and check amounts comply with polices and rules include:

- At-site measure or estimate of median flow (*Med*)
- Total upstream and downstream core and supplementary allocations

Band 1 Allocation

1. From *Med*, calculate 1.5 x median (*1.5Med*)
2. Calculate 50% of the flow rate between *Med* and *1.5Med*. This is the Maximum Cumulative Upstream Supplementary Allocation (*MaxCuBAND1_SA*) available under Band 1
3. Subtract any existing upstream supplementary Band 1 allocations
4. The final number is the Maximum Supplementary Allocation (*MaxBAND1_SA*) available to any new consent at this site under the **Band 1 flow range.**
5. Check that MaxBAND1_SA does not cause exceedance of band allocation amounts at any existing downstream points of supplementary take

Band 2 Allocation

1. From *Med*, calculate 2 x median (*2Med*)
2. Calculate 50% of the flow rate between *1.5Med* and *2Med*. This is the Maximum Cumulative Upstream Supplementary Allocation (*MaxCuBAND2_SA*) available under Band 2
3. Add allocation amount from Band 1 (*MaxBAND1_SA*) and subtract any existing upstream supplementary Band 2 allocations
4. The final number is the Maximum Supplementary Allocation (*MaxBAND2_SA*) available to any new consent at this site under the **Band 2 flow range.**
5. Check that MaxBAND2_SA does not cause exceedance of band allocation amounts at any existing downstream points of supplementary take

Band 3 Allocation

1. From *Med*, calculate 3 x median (*3Med*)
2. Calculate 50% of the flow rate between *2Med* and *3Med*. This is the Maximum Cumulative Upstream Supplementary Allocation (*MaxCuBAND3_SA*) available under Band 3
3. Add allocation amount from Band 1 (*MaxBAND1_SA*) and Band 2 (*MaxBAND3_SA*) and subtract any existing upstream supplementary Band 3 allocations
4. The final number is the Maximum Supplementary Allocation (*MaxBAND3_SA*) available to any new consent at this site under the **Band 3 flow range.**
5. Check that MaxBAND3_SA does not cause exceedance of band allocation amounts at any existing downstream points of supplementary take

Method 2 for calculating point of take allocation amounts for rivers with mean flow < 1 m^3/sec

The following methods should be followed to calculate allocation amounts for each band for each point of take.

Data required to make the calculations and check amounts comply with polices and rules include:

- At-site measure or estimate of median flow (*Med*)
- Total upstream and downstream core and supplementary allocations

Band 1 Allocation

1. From *Med*, calculate 1.5 x median (*1.5Med*)
2. Calculate 10% of the total flow rate at the mid-point of the band range. This is the Maximum Cumulative Upstream Supplementary Allocation (*MaxCuBAND1_SA*) available under Band 1
3. Subtract any existing upstream supplementary Band 1 allocations
4. The final number is the Maximum Supplementary Allocation (*MaxBAND1_SA*) available to any new consent at this site under the **Band 1 flow range.**
5. Check that MaxBAND1_SA does not cause exceedance of band allocation amounts at any existing downstream points of supplementary take

Band 2 Allocation

1. From *Med*, calculate 2 x median (*2Med*)
2. Calculate 10% of the total flow rate at the mid-point of the band range. This is the Maximum Cumulative Upstream Supplementary Allocation (*MaxCuBAND2_SA*) available under Band 2
3. Add allocation amount from Band 1 (*MaxBAND1_SA*) and subtract any existing upstream supplementary Band 2 allocations
4. The final number is the Maximum Supplementary Allocation (*MaxBAND2_SA*) available to any new consent at this site under the **Band 2 flow range.**
5. Check that MaxBAND2_SA does not cause exceedance of band allocation amounts at any existing downstream points of supplementary take

Band 3 Allocation

1. From *Med*, calculate 3 x median (*3Med*)
2. 10% of the total flow rate at the mid-point of the band range. This is the Maximum Cumulative Upstream Supplementary Allocation (*MaxCuBAND3_SA*) available under Band 3
3. Add allocation amount from Band 1 (*MaxBAND1_SA*) and Band 2 (*MaxBAND3_SA*) and subtract any existing upstream supplementary Band 3 allocations
4. The final number is the Maximum Supplementary Allocation (*MaxBAND3_SA*) available to any new consent at this site under the **Band 3 flow range.**
5. Check that MaxBAND3_SA does not cause exceedance of band allocation amounts at any existing downstream points of supplementary take

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